IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.75 of 1995

1. Chinnaiah @ Chinnasamy
2. Ravi
3. Nagarajan
4. Deivendran
5. Muniandi
6. Chezhian
7. Ganesan
8. Narayanan .. Appellants/Accused 1 to 8

-Vs-

State by Inspector of Police
Elayankudi Police Station
(Cr.No.736/90) .. Respondent/complainant

This Criminal Appeal is preferred under S.374(2) of Code of Criminal Procedure against the judgment of the learned Sessions Judge, Pasumpon Muthuramalinga Devar District, Sivaganga dated 23.12.1994 in S.C. No.16 of 1993.

!For Appellants : Mr.V.Raghupathi for A-1, A-2,
A-4 and A-6

Mr.R.Karthikeyan for A-3, A-5,
A-7 and A-8

^For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.

The appelants herein, who were ranked as A-1 to A-8 in S.C.No.16/93 on the file of the Principal Sessions Court, Sivaganga, have assailed the judgment wherein they were found guilty and sentenced to imprisonment as shown below.

Accused Sentence Offence (I.P.C.)

A-1 Life imprisonment 302 r/w 34
5 years R.I. 307 r/w 34
1 year R.I. 148
5 years R.I. 449
1 year R.I. 324 r/w 34

A-2 Life imprisonment 302 r/w 34
5 years R.I. 307 r/w 149
1 year R.I. 148
5 years R.I. 449
1 year R.I. 324 r/w 34

A-3 Life imprisonment 302 r/w 34
148
5 years R.I. 307 r/w 149
5 years R.I. 449
1 year R.I. 324
1 year R.I. 324 r/w 34

A-4 Life imprisonment 302 r/w 34
1 year R.I. 148
5 years R.I. 307 r/w 149
5 years R.I. 449
1 year R.I. 324 r/w 34

A-5 Life imprisonment 302 r/w 34
5 years R.I. 307 r/w 34
1 year R.I. 148
5 years R.I. 449
1 year R.I. 324 r/w 34

A-6 Life imprisonment 302 r/w 34
1 year R.I. 148
5 years R.I. 307 r/w 34
5 years R.I. 449
1 year R.I. 324 r/w 34

A-7 Life imprisonment 302 r/w 34
1 year R.I. 147
5 years R.I. 307 r/w 34
5 years R.I. 449
1 year R.I. 324 r/w 34

A-8 1 year R.I. 147
5 years R.I. 307 r/w 34

A-9 to A-11 in the said case were acquitted of all the charges against them.

2. On 24.8.1990 at about 2.00 hours in Door No.76, Melapidarichery, Brahmanakurichi Village, the appellants, ranked as A-1 to A-8 in the case along with six others armed with deadly weapons like aruval, patta knife, revolver, etc., constituted an unlawful assembly with the common object to commit the murder of Rajasekaran, P.W.3 Malarkodi and the deceased Manimaran, forcibly entered into the said house, committed the murder of Manimaran, and attempted to cause the murder of and cause grievous injuries to the witnesses, which warranted the framing of the following charges against the appellants.

Serial No. Accused Section

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1. A-7 and A-8 147 IPC
A-1 to A-6 148 IPC

2. A-3 323 IPC

3. A-1, A-2 and
A-4 to A-8 323 r/w 149 IPC

4. A-1 to A-8 449 IPC

5. A-1 to A-7 302 r/w 34 IPC

6. A-8 302 r/w 149
IPC

7. A-3 326 IPC

8. A-1 and A-7 324 r/w 34 IPC

9. A-1 and A-5 to A-8 307 r/w 34 IPC

10. A-2 to A-4 307 r/w 149 IPC

11. A-1 and A-6 25 (1B)(A) of Arms
Act

12. A-3 and A-6 342 IPC

13. A-1 to A-8 427 IPC

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3. The brief facts necessary for consideration of this appeal can be stated as follows:
P.W.1 Rajasekaran was residing at Thoothai Village. He owned a tractor with Registration No.TN 63-0954, which he used to hire for agricultural operations and was earning out of it. One Balaguru Servai, a pangali of P.W.1 was also residing in the said Village. There was pre existing enmity between the families. On 24.6.1990, when the said tractor was driven by Dhanasekaran, the younger brother of P.W.1, an accident took place,

in which the said tractor and a motorcycle driven by Chellamuthu, son of Balaguru Servai dashed against each other, and in that collision, Chellamuthu died. Balaguru Servai and his family members became inimical to P.W.1's family, since they thought that the death of Chellamuthu was deliberately caused by Dhanasekaran. Ten days prior to the occurrence, on the request made by P.W.22 Arumugam, P.W.1 took his tractor to Brahmanakurichi on contract basis for the agricultural operations and stayed at his house at Door No.76, Melapidaricheri, Brahmanakurichi Village. On 24.8.1990 at about 2.00 hours, P.W.1, the deceased Manimaran, his wife Jothi, and one Arumugam, all were sleeping in the inner room, while P.W.22 Arumugam and his wife P.W.3 Malarkodi were sleeping outside. P.W.6, Bhoominathan, the brother of Manimaran was sleeping at the motor room. At about 2.00 A.M., P.W.3 Malarkodi hearing the noise and commotion woke up first, and following her, all the persons present there woke up. P.W.1 switched on the light and saw through the window and witnessed the appellants and the other accused armed with patta knife, aruval, revolver, Velkambu and sticks. On seeing P.W.1, A-1 shouted "He is here, kill him". When the accused came near P.W.1, P.W.22 Arumugam and his wife P.W.3 Malarkodi intervened. A-1 shouted "cut them also". Immediately P.W.22 and his wife P.W.3 escaped from the scene of occurrence. P.W.1 closed the door and bolted. The accused forcibly opened the door and made entry into the room. The deceased Manimaran questioned A-1 why they should attack them. On hearing this, A-1 uttered "you have brought him here and have given shelter" and A-1 directed the other accused to finish him first. Immediately A-3 attacked the deceased Manimaran with an aruval on the back of right knee. A-1 gave a severe blow on the left chest of the deceased with a patta knife. A-3 attacked P.W.5 Jothi on the left ankle with an aruval. A-1 also attacked P.W.6 Bhoominathan on the right knee with patta knife. Because of fear, P.W.1 ran into the inner room. A-6 Chezhian attempted to fire at P.W.1 through the pistol. Since the bullet did not come out, he opened the revolver to check the same. At that time, one of the accused removed the tiles from a corner of the house and caused simple injury by pinning with a stick. Again A-6 made an attempt to fire at P. W.1, but failed. Seeing this, A-1 took the revolver from A-6 and fired twice on P.W.1. But, on both occasions, the bullets without touching him pierced into the wall. P.W.1 managed to remove the reaper on the roof and came out of the house. The accused proclaimed that Manimaran was dead and fled away from the scene of occurrence.

4. P.W.1 escaped from the place of occurrence, ran to the house of P.W.2 Velu and narrated the whole incident. P.W.1 stayed there till dawn of the day. P.Ws.1 and 2 went to Ilayankudi Police Station at about 9.00 A.M. P.W.23, Sankar, Sub Inspector of Police, who was in charge of Ilayankudi Police Station, recorded the statement of P.W.1 which is Ex.P1. On the strength of Ex.P1, he registered a case in Crime No.736/90 under Ss 147, 148, 324, 307 and 302 of Indian Penal Code read with S.25(A1) of Arms Act read with S.34 of I.P.C. against the accused. Ex.P35 printed First Information Report and Ex.P1 statement were despatched to the concerned Judicial Magistrate, Sivaganga. P. W.1 Rajasekaran, P.W.5 Jothi and P.W.6 Bhoominathan, who have sustained injuries at the time of the occurrence, were sent by P.W.23 to the General Hospital for treatment with a medical memo. On receipt of the information through V.H.F., P.W.24 Ramaiah, Inspector of Police, proceeded to Melapidaricheri. He received a copy of the First Information Report from P.W.23, Sub Inspector of Police and took up the investigation. The

Investigation Officer made inspection of the scene of occurrence in the presence of P.W.1 and one Muthusamy and prepared Ex.P14 Observation Mahazar and Ex.P36 rough sketch. He conducted inquest on the body of Manimaran between 11.00 A.M. and 1.00 P.M. and prepared Ex.P37 inquest report in the presence of the said witnesses.

5. On 24.8.1990 at about 11.15 A.M., P.W.7 Dr.A.Ravindran examined P.W.1 Rajasekaran and found the following injuries.

1. An irregular gaping wound at the outer end of left eye brow «" x ¬ " x ¬".
2. An oblique contusion on left upper back 3x1/4" x ¬".
3. An abrasion on left side of the abdomen ¬" x ¬".
4. Pain in the upper row of gums in the left half.

P.W.7 has opined that those injuries were simple and has issued Ex.P3 wound certificate. At about 10.45 A.M. P.W.7 Doctor examined P.W.5 Jothi and found the following injuries.

1. Patient conscious and gave the above statement.
2. A gaping wound with clear cut margins on the left foot top at the junction of the leg & foot exposing the inner tendons and muscles 3" x 2" x «".

On x-ray, the following was found.

-X-ray left ankle with foot AP Lat.
-Fracture lower end of left tibia.

P.W.7 Doctor has opined that the nature of injury is grievous and has issued a wound certificate under Ex.P4. At about 11.00 A.M., P.W.7 Doctor examined P.W.6 Bhoominathan. He found the following injuries on him.

1. A gaping wound with clear cut margins on Rt. knee running obliquely 2" x «" x «".
2. A contusion on left middle back 1" x ¬" x ¬".

The Doctor has opined that the injuries were simple in nature and has given Ex.P5 wound certificate.

6. After the inquest was over, the Investigation Officer sent the dead body through P.W.20 Perumal, a constable, to the General Hospital for postmortem with Ex.P7 requisition. On receipt of Ex.P7 requisition, P.W.7 Dr.Ravindran, commenced the postmortem at 4.15 P.M. on the dead body and found the following injuries.

1) An oblique spindle shaped wound 5 x 2 cm on the middle of neck left side with tapering and downwards with clear cut margins with blood clots. Cut muscles and cut vessels seen through the wound.
2) An oblique spindle shaped wound of 5 x 2 « cms with clear cut margins on the left chest 6" below the nipple and 2 cms away from midline of the chest, running downwards medially and inwards towards the right with blood clots seen.
3) A horizontal incised wound of 10 x 10 x 6 cms with clear cut margins on the right leg 10 cm below the popletial fosse, exposing the bones, muscles, with blood clots.
4) Horizontal incised wound of 5 x 2 x 1 cms with clear cut margins just 1 cm above the wound 3 with blood clots.
5) An oblique incised wound of 5 x 4 x 3 cms with clear cut margins on the back of left thigh 10 cms above the popletial fosse with blood clots.
6) An oblique incised wound of 4 x 3 x 3 cms on the medial aspect of left thigh 10 cms above the knee joint with blood clots.
7) An incised wound of 4 x 3 x 1 cm on right gluteal region in the upper outer quadrant with blood clots.

8) A horizontal incised wound of 9 x 4 x 3 cms on middle of sacral region exposing the muscles.
9) A horizontal incised wound of 5 x 4 x 1 cm on the inner quadrant of left gluteal region.
10) An incised wound 5 x 2 x 1 cm on the back of left arm encircling the axilla with blood clots.

11) An incised horizontal wound of 1 « x 1 x 1 cms on the left supra scapular region.
12) An incised wound of 1 x « x « cms over the 5th metacarpo phalangeal joint of right hand.
13) An incised wound of « x ¬ x ¬ cm on the 4th metacarpo phalangeal joint of right hand.
14) An oblique incised wound of 5 x 2 x 1 cms on the medial side of left palm with blood clots.
15) An abrasion of « x ¬ cms on left knee.
16) An oblique incised wound 6 x 3 x 1 cm on the back of middle of left fore arm with blood clots.
P.W.7 Doctor has issued Ex.P8 postmortem certificate and has opined that the deceased would appear to have died of shock and haemorrhage due to injuries to vital organs and multiple injuries.
7. After the postmortem was over, M.O.18 bloodstained banian, M.O.19 bloodstained trouser, M.O.20 bloodstained lunghi and M.O.21 waist thread, which were recovered from the dead body of Manimaran, were handed over to P.W.20 Constable, who produced them before the Investigation Officer. P.W.24 Inspector of Police, recovered M.O.10 bloodstained earth, M.O.11 earth without bloodstain, M.O.12 (series) fired bullets, M.O.13 unfired bullet and M.O.14 (series) fired bullets under Ex.P15 Mahazar. The damaged tractor was sent for inspection by the Motor Vehicle Inspector. The report given by P.W.13, Natarajan, Motor Vehicle Inspector, on inspection of the tractor is marked as Ex.P16. The Investigation Officer enquired P.Ws. 1, 5 and 6 at the Government Hospital, Ilayankudi and recorded their statements. He recovered M. O.23 banian from P.W.1, M.O.24 saree from P.W.5, and M.O.25 Lunghi from P.W.6. The Investigation Officer sent P.W.3 Malarkodi to the General Hospital for treatment. On 25.8.1990 at 4.45 P.M., P.W.4 Dr. Raheema Usman examined P.W.3 Malarkodi and found the following injuries.
-Pain on the left ear and left cheek present.
P.W.4 Doctor has opined that the said injury was simple and has given Ex.P2 wound certificate.
8. On information that A-1, A-3 and A-4 surrendered before the court, he applied before the concerned court for police custody for the purposes of interrogation. Pursuant to an order dated 13.9.1990, he took A-1, A-3 and A-4 and enquired them. On 13.9.1990, A-1, A-3 and A-4 gave separate confessional statement in the presence of P.W.15 Muniyandi and Pakkan. Following the same, A-1 produced M.O.3 patta knife, and the Investigation Officer recovered the same under Ex.P18 mahazar in the presence of the said witnesses. As per the confessional statement given by him, A-4 produced M.O.4 Velkambu, and the same was recovered by the Investigation Officer under Ex.P19 mahazar in the presence of the witnesses. Following the same, A-3 produced M.O.1 aruval, which was recovered under Ex.P20 mahazar in the presence of the same witnesses. Despite the information given by A-1 regarding the revolver, the

same could not be traced out. A house search was made in the residence of the first accused, and Ex.P39 house search mahazar was prepared. On 16.9.1990, at about 14.30 hours, A-2 and A-10 were arrested at Manamadurai-Madurai Road, Milaganoor Junction, and their confessional statements were recorded separately. M.O.26 Ambassador Car bearing Registration No.MD 6233 was recovered from A-10 under Ex. P40 mahazar in the presence of P.W.16 and one Marimuthu. The Investigation Officer recovered M.O.2 patta knife, produced by A-2, under Ex. P41 mahazar in the presence of the witnesses. On 19.9.1990, at about 1.45 P.M., P.W.7 Doctor examined A-3 Nagarajan and found the following injuries.

1. A healed scab formed linear horizontal wound on the left wrist back about 2 «" x ¬".

The Doctor has opined that the injury found on him was simple and would have been caused by M.O.1 aruval. He has issued Ex.P6 wound certificate.

9. On 23.9.1990 at 1.00 P.M., when A-8 was arrested at Manjapattinam, Paramakudi, he gave a confessional statement, and the same was recorded in the presence of P.W.17 Marimuthu and Sivanandam. A-8 took the police party to Padamathur-Thirupachi Road, Kavaloor Junction and produced M.O.6 stick, M.O.7 stick and M.O.17 stick. The Investigation Officer recovered them under Ex.P24 mahazar in the presence of the above witnesses. On 24.8.90, P.Ws.1, 3, 5, 6, 9, 22 and Arulandhu were enquired and their statements were recorded. On 23.9.90 at 1.00 P.M., A-7 was arrested at Vaigai River Bridge, Manjapattinam. As per his confessional statement, he produced M.O.8 bamboo stick in the presence of P.W.17 and Sivanandam. The Investigation Officer recovered the same under Ex.P26 Mahazar. On 30.9.90, the statements of P.Ws.7 and 9 Doctors were recorded. On 9.10.1990, the 5th accused was arrested, and his confessional statement was recorded. Following the said confession, A-5 produced M.O.5 Velkambu in the presence of P.W.9 Savarimuthu and Subramaniam, and the same was recovered under Ex.P27 mahazar. On 9.10.1990 at about 10.30 P.M., A-6 was arrested near Elayankudi Panchayat Union Office. His confessional statement was recorded in the presence of P.W.19 Rajamanickam and Subramaniam. The Investigation Officer despatched all the material objects to the concerned Judicial Magistrate with Exs.P28 and P32 requisitions for chemical analysis. After the examination of the material objects, Exs.P30 and P31 Chemical Analyst's reports and Ex.P34 Serologist's report were received by the concerned court. The photographs pertaining to the place of occurrence are marked as M.O.15 (series), and the negatives are marked as M.O.16. The Investigation Officer obtained necessary permission from the District Collector to prosecute the accused under the relevant provisions of the Arms Act.

10. The Investigation Officer gave Ex.P9 requisition to the concerned Judicial Magistrate to conduct an identification parade. P.W.8, Mr.Devadas, Judicial Magistrate No.I, Sivagangai, sent Ex.P10 letter to the Chief Judicial Magistrate for permission to conduct the identification parade at Madurai Central Jail. On receipt of Ex.P11 order, P.W.8 issued Ex.P12 order directing the witnesses to be present on 27.10.1990 in that regard. 13 witnesses were produced. P.W.8 selected 40 persons identical to the accused. P.W.6 identified A-1 to A-9 and A-11, while P.W.5 identified A-1. P.W.22 identified A-1, A-2, A-5, A-7 and A-8. A-5 was identified by P.W.10. P.W.3 Malarkodi identified A-1 to A-8 and A-11. After completion of the identification parade, P.W.8 despatched Ex.P13 report to the Chief Judicial Magistrate. On

completion of the investigation, the Investigation Officer laid the charge sheet.

11. In order to prove the charges, the prosecution has examined P. Ws.1 to 24, marked Exs.P1 to P43 and produced M.Os.1 to 26. When the accused were questioned under S.313 of Code of Criminal Procedure, they denied the version of the prosecution witnesses and would further add that their versions were false. On the side of the defence, D.W.1 was examined, and Exs.D1 to D7 were marked. One Kesavaram was examined as C.W.1, and Exs.C1 was marked. After hearing both sides, the learned Sessions Judge found the appellants-accused guilty and sentenced them as found above. Hence, this appeal. In respect of the charges, in which the appellants/accused were acquitted, the State has not preferred any appeal.

12. Arguing for the appellants, the learned Counsel would submit that the trial court should have acquitted all the appellants, who were ranked as A-1 to A-8, of all the charges, since the prosecution has miserably failed to prove the accusations made against them; that according to the prosecution, A-1 and others went to the scene of occurrence with a motive to murder P.W.1, in view of the earlier enmity that prevailed among the families; that the motive that was attributed was removed; that even if the accused entertained any such motive, they would have given effect to the same in their native place viz. Thoothai; that there was no need for them to visit Brahmanakurichi situated 40 or 45 kilometers away; that even according to the prosecution, the accused constituted an unlawful assembly with the common object of murdering P.W.1 and not anybody else; that though there were 15 accused armed with deadly weapons, no one attacked P.W.1; that it is pertinent to note that all the injuries sustained by him were simple and superficial; that according to the witnesses, it was A-1, who asked them to attack P.W.22 stating that it was he, who was harbouring P.W.1 ; that it is pertinent to note that the said P.W.22 and his wife P.W.3 escaped from the place of occurrence even before the commencement of the occurrence; that according to the prosecution, the assailants armed with deadly weapons, attacked the deceased Manimaran, an utter stranger, and thus the prosecution story was improbable and unbelievable; that it is pertinent to note that the appellants had neither the common intention nor the common object to attack the deceased, and hence, the prosecution story as to the common intention or common object has got to be rejected; that there was undue and unexplained delay in making a complaint to the police; that according to the prosecution, the occurrence has taken place at 2.00 A.M. on 24.8.1990, but the complaint was given by 9.00 A.M. i.e. after about 7 hours; that the explanation of the prosecution that P.W.1 escaped from the place of occurrence and went to the house of P.W.2 Velu and stayed over that night to keep himself safe, and then, he proceeded to the Police Station along with P.W.2 in a cycle could not be believed; that there was bus facility from 4.30 A.M. onwards, and hence, the delay in lodging the complaint has greatly affected the prosecution case. Added further the learned Counsel that it is highly artificial that the said complaint contained the names of eyewitnesses, all the overt acts and all the injuries caused to the deceased; that Ex.P1 complaint has come into existence only after consultation and deliberations; that at this juncture, it has to be pointed out that the occurrence has taken place during night hours; that while the prosecution has come forward with the case stating that the occurrence has taken place at 2.00 A.M., a duty was cast upon the prosecution to prove the

fact of availability of light to show that the witnesses were able to see the occurrence; that in the instant case, it is pertinent to note that the light is not mentioned either in the Observation Mahazar or in the Rough Sketch or the photographs, which were the earliest documents, but the theory of light was an introduction and development at the time of the trial, and on that ground, the lower court should have rejected the prosecution case; that the prosecution has relied on the evidence of P.Ws.1, 3, 5 and 6 as eyewitnesses; that it is highly improbable that P.W.1, against whom all the accused had common intention to finish him of did not attack him, and he was able to escape from the place of occurrence; that as per the prosecution case, P.W.5 had sustained grievous injury at the time of occurrence by an attack made by A-3; that it remains to be stated that she has neither identified A-3 nor identified any one of the accused except A-1, which would make it highly doubtful whether she was present at the time of occurrence and sustained the injury as urged by the prosecution; that there is lot of inconsistency as to the overt acts committed by the respective accused in the evidence of the witnesses; that one Mani @ Manikandan mentioned as one of the accused, who participated in the alleged occurrence, was actually in judicial custody from 20-4-1990 to 5-10-1990, and this fact was proved by the defence through the evidence of P.W.24 and D.W.1, and this itself would clearly show the falsity of the prosecution case; that it is highly artificial on the side of the prosecution to state that despite attempts were made by two o f the accused persons, the bullet never hit at P.W.1, and if this has got to be believed, it would be clear that the occurrence should have taken place in utter darkness and persons, who were armed with deadly weapons like knife and aruval would not have spared P.W.1 at any rate; that it would be highly difficult to believe that when all the accused came to the scene of occurrence with the common object of doing away with P.W.1, they allowed P.W.1 to climb on the rooftop and to allow him to escape, but the prosecution has come forward to state that some of the accused climbed the roof, dismantled the tiles for attacking P.W.1, and the injuries alleged to have been sustained by P.W.1 were simple, which cannot be taken as corroborative piece of evidence for his oral version; that out of the four witnesses, examined by the prosecution to prove the confessional statements by the accused and the consequent recoveries, P.Ws.16 and 19 have turned hostile; that it is pertinent to note that the other two witnesses viz. P.Ws.15 and 17 are closely related to the deceased, and hence, it would clearly indicate that those confessional statements were the documents introduced for the purpose of the case, and the material objects were planted through those false recoveries; and that it is highly improbable that the deceased, his wife and his brother alone sustained serious cut injuries, while the prosecution comes with a story that the accused proceeded with the common intention of killing P.W.1. Added further the learned Counsel that the identification parade was conducted on 27.10.1990 after two months, and hence, in view of the inordinate delay, the whole proceedings lost its importance and significance, and therefore, that piece of evidence has got to be eschewed; that the evidence of P.Ws.14 and 15 that they saw A-5 along with four other accused, four years prior to their evidence has got to be rejected as one shabby, and thus, the prosecution has failed to prove the case beyond reasonable doubts, as required by law; that it is pertinent to note that the accused were acquitted of the charges under the Arms Act, and hence, it would be highly improbable to convict these appellants for attempt to commit murder

of P.W.1, when he sustained simple injuries, and on that ground, the conviction of A-1 to A-8 under S.307 read with S.34 of I.P.C. and S.307 read with S.149 of I.P.C. has got to be set aside; that apart from that A-2 to A-4 were convicted with the aid of S.149 of I.P.C., which was also illegal, since there was no unlawful assembly at all; that the injury Nos.1 and 2 were alleged to have been caused by A-2 and A-1 respectively; that P.W.7 postmortem Doctor has opined that those injuries were fatal; that all other injuries, according to the prosecution, were inflicted subsequently, and those injuries were simple in nature; that as per the prosecution case, 16 accused participated in the crime; that due to the abscondance, some other accused were not listed in the present case; that even among the 10 accused, 7 of them were convicted for the offence under S.302 read with S.34 of I.P.C., and 3 others were acquitted for the offence under S.302 of I.P.C.; that even as per the finding of the Sessions Court, the case of the prosecution was a mixture of truth and falsity, and under such circumstances, it has to be stated that it is a fit case for acquittal in entirety, and hence, the appeal has got to be allowed, and all the appellants be acquitted of all the charges levelled against them.

13. The learned Additional Public Prosecutor in his sincere attempt to sustain the judgment of conviction and sentence by the lower court would submit that the prosecution has clearly proved the motive for the crime through sufficient evidence; that there was no delay in the F.I.R., since P.W.1 has hidden himself in the house of P.W.2 during night hours and went to the Police Station, which is situate 15 kilometers away and has given Ex.P1 complaint at 9.00 A.M.; that even in Ex.P1 complaint, the earliest document, P.W.1 has clearly alleged about the availability of light, and all the eyewitnesses have clearly narrated the occurrence in entirety; that their evidence is cogent and convincing; that it is pertinent to note that all the assailants were already known to them, and hence, there would not have been any difficulty for those witnesses to narrate the occurrence and to speak of the accused with the overt acts committed by the respective accused; that it is true that the identification parade was conducted after two months; that it did not mean that the identification cannot be relied on by the prosecution; that the identification parade was not the sole piece of evidence relied on by the prosecution; that though they went to the place of occurrence with the common object of doing away with P.W.1, they could not do so; that from the available evidence, it would be clear that the accused attempted at his life by shouting at him, but narrowly he escaped, and thus, it would be clear that the accused went to the place of occurrence with the common object of killing him; that even before P.W.1 escaped through the rooftop, he was hit with sticks, and he sustained simple injuries; that on arrest, A-3 was examined by P.W.7 Doctor, to whom he has made a statement that he sustained injuries in an occurrence that took place at about 3.00 hours on 24.8.1990; that on the confessional statements given by the accused, the deadly weapons have been recovered; that it is true that out of the four witnesses examined in that regard, two of them turned hostile, but the other two witnesses have given cogent evidence; that it is not correct to state that the accused had no common intention or object to murder the deceased; that it is pertinent to note that though the accused had no intention or object to do so, their common intention is quite evident from the conduct of and the acts committed by the accused at the time and place of occurrence; that the medical evidence adduced

by the prosecution through P.W.7 and Ex.P8 postmortem certificate would clearly reveal that the death was caused by the assailants by using the deadly weapons, recovered from them and produced before the court; that apart from that, the prosecution has also adduced sufficient medical evidence to support the oral testimonies of the witnesses in order to prove the charges of attempt to murder and other offences, and hence, the judgment of the lower court has got to be affirmed.

14. The appellants herein, who were ranked as A-1 to A-8 have assailed the judgment of the Court of Sessions, whereby they were found guilty and sentenced to imprisonment as shown above. The case of the prosecution was that a gang of 15 persons including the appellants armed with deadly weapons, constituted an unlawful assembly on the night of 24.8.1990 and committed the different offences found under the charges. The first contention of the appellants' side that there was an inordinate and unexplained delay in lodging the complaint, since the occurrence has taken place at 2.00 A.M. on 24.8.90, and the case was registered only at 9.00 A.M., cannot be accepted for the reason that the occurrence has taken place at 2.00 A.M. in the house of P.W.22, which was situated single in that area; that the assailants were armed with deadly weapons and attacked the inmates; and that the concerned Police Station viz. Ilayangudi Police Station was situated 15 kilometers away. Under such circumstances, no one, in particular P.W.1, against whom the assailants aimed, would not venture to go to the Police Station in the dark hours, and hence, the conduct of P.W.1 to get asylum in the house of P.W.2 that night and went to the police Station in the morning and gave a complaint at 9.00 A.M. cannot be stated to be inconsistent with the reasonable human conduct under that circumstance, and thus, there is no delay in Ex.P1 complaint.

15. Equally, the Court is unable to see any force in the next contention of the appellants' side that the prosecution case has got to be rejected, since the occurrence has taken place during night hours; and that the earliest documents viz. Observation Mahazar and Rough Sketch prepared by P.W.24, Investigation Officer and the photographs taken at the time of investigation do not indicate the existence of any light. It is pertinent to point out that Ex.P1, the earliest document, as in any criminal case, would clearly reveal that the electric light was available in the place of occurrence viz. P.W.22's house, and immediately, after hearing the noise, P.W.1 switched on the light, and the witnesses were able to see the occurrence, and hence, it cannot be stated that the theory of light was not one introduced at the time of evidence.

16. Concededly, the father of A-1 Balaguru Servai and P.W.1 were pangalis. From the time of the murder of the grandfather of P.W.1, the families were inimical to each other for a long time. Admittedly, the tractor owned by P.W.1, met with an accident two months prior to the date of occurrence, in which Chellamuthu brother of A-1, who came in a motorbike, was killed, and a case was registered under S.304-A of I.P.C. against Dhanasekaran, the brother of P.W.1, who drove the tractor at the time of accident, and the said case was pending at the time of the instant occurrence. According to the prosecution, A-1's family had the impression that the death of his brother Chellamuthu was not accidental, but a deliberate act committed, and hence, A-1 wanted to wreck vengeance on P.W.1's family. While all the above facts are admitted, it cannot be stated that the prosecution lacks in

attributing motive to the accused for committing the crime or has failed to prove the same.

17. In order to prove the occurrence, the prosecution has examined P.Ws.1, 3, 5 and 22 as eyewitnesses. According to the prosecution case, the occurrence has taken place in the house of P.W.22 and his wife, P.W.3. From the evidence of P.Ws.3 and 22, it would be clear that both the witnesses were sleeping outside the house at the time of occurrence, and on hearing the noise and commotion, it was P.W.3, who first woke up, and following her, P.W.1 switched on the light, and thus, there was all possibilities for P.Ws.3 and 22 to see the presence of the accused with deadly weapons. It is pertinent to note that these witnesses have not only identified the appellants before the lower court, but have also spoken to the fact as to the respective weapons held by them at the time of occurrence. That apart, they have identified the appellants at the time of the identification parade. From the evidence of both the witnesses, it would be clear that they have not spoken anything about the overt acts committed by the accused, since they have admitted that they escaped from the scene of occurrence out of fear. The specific case of the prosecution was that at the time of occurrence, A-3 attacked P.W.5 with an aruval and caused two injuries, out of which one was grievous. The prosecution has much relied on P.W.5's evidence as one of the eyewitnesses, who narrated the entire prosecution story. It remains to be stated that she was a native of Thoothai, to which place P.W.1 and the appellants belonged to, and hence, all the appellants should have been well known to her even before the occurrence. She has identified only A-1 in the course of identification parade and has not identified the other accused including A-3, who according to her testimony, gave her two cut injuries with aruval. Under such circumstances, it would be highly difficult to accept the case of the prosecution that she was also present at the time of occurrence; that she was attacked by A-3; and that she witnessed the individual overt acts of the accused with the respective deadly weapons.

18. Speaking about the occurrence, P.Ws.1 and 6 examined as eyewitnesses, have categorically spoken to the effect that A-3 Nagarajan attacked the deceased Manimaran with M.O.1 aruval on his right knee; that A-1 stabbed the deceased Manimaran with M.O.3 patta knife on the left chest; that A-2 attacked Manimaran with M.O.2 patta knife on the left side of the neck; that A-4 attacked the deceased Manimaran with M.O.4 Velkambu on the left thigh; that A-5 attacked the deceased with M.O.5 Velkambu on the left thigh; and that A-7 attacked the deceased Manimaran with M.O.8 Bamboo Stick on his left knee. Both the witnesses have spoken to the effect that the deceased Manimaran so attacked as stated above, met an instantaneous death. It is not disputed by the appellants' side that Manimaran died out of homicidal attack. During investigation, P.W.14 Inspector of Police after conducting the inquest on the dead body of Manimaran, sent the dead body for postmortem. P.W.7 Dr.Ravindran, on receipt of the requisition from the Investigation Officer in that regard, commenced and conducted the autopsy and has given evidence. The evidence of P.W.7 Doctor would go to show that the injury Nos.1 and 2 were fatal, while all other injuries found were simple in nature. From the postmortem certificate marked as Ex.P8, it would be clear that the deceased would have died of shock and haemorrhage due to injuries to vital organs and multiple injuries. P.W.7 Doctor has clearly opined that the external injury Nos.1 and 2 and the corresponding internal injuries were fatal, which led to

the instantaneous death. Thus, the medical evidence adduced through P.W.7 and Ex.P8 postmortem certificate would stand in full corroboration of the ocular testimonies put forth by the prosecution through the evidence of P.Ws.1 and 6.

19. P.W.1 has stated that A-5 and A-8 pecked with agathi stick on him, and he sustained injuries on his left eyebrow and left side of his back. P.W.7 Doctor who issued Ex.P3 wound certificate, has stated that he found four simple injuries. The contents of Ex.P3 wound certificate would support and confirm the testimony of P.W.1 as to the injuries sustained by him at the time of occurrence. In the course of the said transaction, A-1 attacked P.W.6 with M.O.3 patta knife on his right knee, and A-7 attacked him with agathi stick on his back. P. W.6 who is one of the eyewitnesses to the whole occurrence, has spoken about those injuries caused to him. P.W.7 Dr.Ravindran has deposed that at 11.00 A.M. on 24.8.1990, he examined P.W.6 Bhoominathan; and that P.W.6 has stated that he was attacked at 2.00 A.M. by two known persons with patta knife and agathi stick . The wound certificate pertaining to the injuries found on P.W.6 was marked by the prosecution as Ex.P5, from where it could be seen that those injuries were simple in nature. The medical evidence adduced through P.W.7 and Ex.P5 wound certificate have supported the ocular testimony of P.W.6 regarding the injuries sustained by him.

20. During investigation, P.W.24 Investigation Officer has recorded the confessional statements given by A-1, A-3 and A-4 separately in the presence of P.W.15 and one Pakkan. Pursuant to the confessional statements, A-1 has produced M.O.3 patta knife, which was recovered under Ex.P18 mahazar. A-4 has produced M.O.4 Velkambu, which was recovered under Ex.P19 mahazar in the presence of the said witnesses. The Investigation Officer has recovered M.O.1 aruval produced by A-3 under Ex.P20 mahazar. The prosecution has examined P.W.15 to prove the confessional statements given by A-1, A-3 and A-4 and the recoveries of the above weapons. Likewise, A-8 has given a confessional statement in the presence of P.W.17 and Sivanandam, which led to the recovery of M.Os.6 & 7 agathi stick and M.O.17 Pichuva knife. On production of the same by A-8, the Investigation Officer recovered them under Ex.P24 mahazar. A-7 has also given a confessional statement and has produced M.O.8 bamboo stick, and the same was recovered under Ex.P26 mahazar. Though two out of the four witnesses examined by the prosecution have turned hostile, the other two witnesses viz. P.Ws.15 and 17 have given cogent evidence regarding the confessional statements and the recovery of the respective material objects from the accused as stated above. The defence has not put forth any reason or circumstance to discredit their testimonies, and thus, the above confessional statements recorded from the respective accused and the recovery of the material objects on production by those accused, would clearly reveal the nexus between the accused and the crime in question. As rightly pointed out by the learned Counsel for the appellants, the identification parade proceedings cannot be of any help to the prosecution, in view of the fact that the said identification parade was conducted nearly after two months from the date of occurrence. Hence, the prosecution through the evidence as discussed above, has proved beyond reasonable doubt that an occurrence took place at 2.00 A.M. on 24.8.1990 in the house of P.W.22 in which the appellants 1 to 8 armed with the respective weapons as stated above, have participated; that the deceased Manimaran died out of the homicidal violence caused by A-1 and A-3 with deadly weapons, while the other appellants/accused caused simple injuries on his body; and that in the course of the said

transaction, P.Ws.1 and 6 sustained simple injuries as stated above.
21. The case of the prosecution before the court below was that the appellants and the other accused armed with deadly weapons constituted an unlawful assembly with an object of killing P.W.1 at the time of occurrence, proceeded to the house of P.W.22 and indulged in criminal acts. It is pertinent to note that as per the available evidence, A-1 directed the other accused to attack P.W.1, and thus, it would be quite evident that the common object was to kill P.W.1. But, on the intervention of P.W.22, A-1 directed the other accused to attack P. W.22. P.W.22 and his wife P.W.3 escaped from the scene of occurrence. When the deceased Manimaran intervened, he was attacked by the appellants. It is pertinent to note that when the accused proceeded to the house of P.W.22 or at the time of attacking Manimaran, they had no common object or intention to kill or attack him. There was no consensus among the accused or meeting of mind among them in that regard. Nowhere it is found that A-1 made any utterance directing any of the accused to attack the deceased. But, because of the intervention made by the deceased Manimaran, the accused have attacked him. Under such circumstances, it cannot be held that there was any unlawful assembly, having the common object of killing or attacking the deceased Manimaran. But, the appellants and other accused armed with deadly weapons constituted an unlawful assembly with the object of attacking P.W.1 Rajasekaran, committed house trespass into the property of P.W.22, engaged themselves in violent acts, and in furtherance of the common object, A-1 to A-6 armed with deadly weapons have committed riot, and hence, A-1 to A-6 are found guilty under S.148 of I.P.C., while A-7 and A-8 are found guilty under S.147 of I.P.C., since they also committed crime of riot.
22. So far as the charge under S.449 of I.P.C. against A-1 to A-8 is concerned, the court below was justified in finding the appellants/ A-1 to A-7 guilty and in acquitting A-8 of the said charge, and hence, the judgment of the trial court in that regard has got to be confirmed.
23. As regards the charge under S.302 r/w S.34 of I.P.C. against A-1 to A-7, in view of the reasons stated and discussions made above, the first appellant/A-1 is found guilty under S.302 of I.P.C., while the third appellant/A-3 is found guilty under S.304 Part I of I.P.C. The appellants 2 and 4 to 7/A-2 and A-4 to A-7 have voluntarily caused hurt by using the weapons, and hence, they are found guilty under S.324 of I.P.C.
24. As regards the charge under S.324 of I.P.C. against A-3, it has been found above that the presence of P.W.5 Jothi at the time of occurrence was highly doubtful, in view of the reasons stated above. Hence, it has to be necessarily held that A-3 cannot be found guilty under S.324 of I.P.C. for causing injury to P.W.5. Therefore, A-3 has to be acquitted of the charge under S.324 of I.P.C.
25. The lower court has convicted A-1 and A-7 under S.324 read with S.34 of I.P.C. holding that pursuant to their common intention, they attacked P.W.6 Bhoominathan with deadly weapons and caused simple injuries. There is nothing to hold that A-1 and A-7 had the common intention to attack P.W.6 at the time of occurrence. But, the prosecution has proved the simple injuries sustained by P.W.6 by ocular and medical evidence. Hence, A-1 and A-7 are liable to be punished under S.324 of I.P.C.
26. With regard to the charge under S.307 read with S.34 of I.P.C. against A-1 and A5 to A-8, it is seen from the evidence that A-6 attempted at

the life of P.W.1 by shouting twice by using revolver, but he could not do so. Hence, A-1 took the revolver from A-6 and aimed at the life of P.W.1 by firing twice, and P.W.1 has narrowly escaped. Regarding the said incident, P.W.1 has clearly deposed. The Investigation Officer has recovered M.Os.12, 13 and 14, fired bullets and unfired bullets respectively under Ex.P15 mahazar. The contents of Ex. P14 Observation Mahazar and Ex.P15 mahazar are not disputed by the appellants' side. That apart, M.O.15 (series) photographs would clearly indicate the bullet marks on the wall. All the above would go to show that A-1 and A-6 made their attempts at the life of P.W.1. So far as A-5, A-7 and A-8 are concerned, they have caused simply injuries to P.W.1 with sticks. Apart from causing simple injuries to P.W.1 with sticks, A-5, A-7 and A-8 were members of the unlawful assembly. Hence, the lower court was perfectly correct in finding A-1 and A-5 to A-8 guilty under S.307 read with S.34 of I.P.C., and the judgment of the trial court in that regard has got to be confirmed.

27. So far as the charge under S.307 read with S.149 of I.P.C. against A-2 to A-4 is concerned, the available evidence would go to show that A-2 to A-4 also composed in the same unlawful assembly having the same common object of attacking P.W.1. Hence, the conviction and sentence imposed by the trial court in that regard has got to be sustained.

28. In the result, this criminal appeal is partly allowed. The judgment of the lower court in respect of the conviction and sentence imposed on A-1 to A-8 under S.449 of I.P.C., on A-1 and A-5 to A-8 under S.307 read with S.34 of I.P.C. and on A-2 to A-4 under S.307 read with 149 of I.P.C. is confirmed. The judgment of the lower court convicting and sentencing A-3 under S.324 of I.P.C. is set aside, and A-3 is acquitted of the charge under S.324 of I.P.C. In other respect, the judgment of conviction and sentence passed by the trial court is modified as follows. A-1 is found guilty under S.302 of I.P.C. and sentenced to undergo life imprisonment. A-3 is found guilty under S.30 4 Part I of I.P.C. and sentenced to undergo R.I. for seven years. A-2 and A-4 to A-7 are found guilty under S.324 of I.P.C. and sentenced to undergo R.I. for two years. A-1 and A-7 are found guilty under S.324 of I.P.C. and sentenced to undergo R.I. for one year. A-1 to A-6 are found guilty under S.148 of I.P.C. and sentenced to undergo R. I. for one year. A-7 and A-8 are found guilty under S.147 of I.P.C. and sentenced to undergo R.I. for one year. The above sentences shall run concurrently. The Sessions Judge is directed to commit the concerned accused to prison, if they are on bail, to undergo the remaining period of sentence.

Index: yes (P.S.M.J.) (M.C.J.)
Internet: yes
3-9-2002
To:
1. The Sessions Judge, Sivaganga, Pasumpon Muthuramalinga Devar District.
2. The District Collector, Sivaganga.
3. The Director General of Police, Chennai 4.
4. The Public Prosecutor, Madras.
5. The Superintendent, Central Prison, Madurai.
6. The Judicial Magistrate No.II, Sivaganga.

7. The Judicial Magistrate No.II, Sivaganga,
Through The Chief Judicial Magistrate, Sivaganga.
8. The Chief Judicial Magistrate, Madurai.
9. The Inspector of Police, Elayangudi Police Station,
Sivaganga District.